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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Brian R. Dershem

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7105

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03/15/2006

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EXAMINER

ROSENBERG, LAURA B

ART UNIT

PAPER NUMBER

3616

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/905,703	Applicant(s) DERSHEM ET AL.	
	Examiner Laura B. Rosenberg	Art Unit 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 50-52 is/are allowed.
- 6) ☒ Claim(s) 41,42 and 45 is/are rejected.
- 7) ☒ Claim(s) 43,44 and 46-49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the amendment filed 12 December 2005, in which claims 15-31 and 33-40 were canceled, claim 41 was amended, and claims 42-52 were added.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 41, 42, and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Takemoto et al. (6,540,286). Takemoto et al. disclose a frame assembly (best seen in figure 1) comprising:

- Main frame assembly (for example, including #4-7, 16) having a base portion (for example, including #6, 7)
- First recessed channel (for example, defined by #10a, 11b) defined on the base portion, extending across a width of the base portion, and positioned to seat directly on a first crossmember (for example, including #3b) of an undercarriage (for example, including #1-3)

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- Second recessed channel (for example, defined by #15) defined on the base portion, extending across a width of the base portion, and positioned to seat directly on a second crossmember (for example, including #3d) of the undercarriage
- First and second recessed channels are positioned between a front (for example, to the left in figure 1) and a rear (for example, to the right in figure 1) section of the main frame assembly
- First and second recessed channels define a strengthened region of the main frame assembly and are able to provide torsional stiffness (best seen in figure 1)

Takemoto et al. do not specifically disclose the frame assembly for use with a loader machine. However, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Further, the frame assembly of Takemoto et al. is able to be used with a loader machine.

Allowable Subject Matter

4. Claims 50-52 are allowed.
5. Claims 43, 44, and 46-49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claims 41, 42, and 45 have been considered but are moot in view of the new ground(s) of rejection.
7. The examiner notes that a positive recitation of the loader machine in claim 41, for example claiming the loader machine comprising a specific frame assembly, as opposed to a frame assembly for a loader machine, might overcome the prior art of record.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fujii discloses a frame assembly including a recessed portion that is seated upon a cross member.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura B. Rosenberg whose telephone number is (571) 272-6674. The examiner can normally be reached on Monday-Friday 7:00am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (571) 272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Laura B Rosenberg
Patent Examiner
Art Unit 3616

LBR



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SUPERVISORY PATENT EXAMINER
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